

1:20-CV-00115-CCW

In its Motion, Defendant seeks leave to re-file a *Daubert* motion which seeks to exclude the general causation testimony of Dr. Bruce Rosenzweig. ECF No. 73 at ¶ 1. Although Defendant timely filed its *Daubert* motion in the MDL court, no ruling was issued prior to this case being transferred to this Court. *Id.* at ¶¶ 2–3. Defendant also suggests that this Court should “adopt essentially the same rulings” from the MDL court’s memorandum and order regarding “a *prior* Boston Scientific *Daubert* challenge to an earlier version of Dr. Rosenzweig’s general opinions.” *Id.* at ¶¶ 4, 6. Plaintiff opposes Defendant’s Motion because “these *Daubert* motions were already included in the Parties’ designation of record for the MDL transfer,” ECF No. 80 at ¶ 1, and because both the MDL court and other transferee courts have departed from the MDL court’s earlier opinion (which Defendant suggests this Court should adopt wholesale) on Dr. Rosenzweig’s general causation opinions. *Id.* at ¶¶ 3, 6, 7.

Having considered the parties' arguments, the Court hereby GRANTS Defendant's Motion for Leave to Re-File Daubert Motion. In its order transferring this case, the MDL court indicated that "*it is the parties' responsibility to follow the receiving court's procedure for identifying any individual motions that remain pending and in need of ruling.*" ECF No. 34 at 2 (emphasis original). Defendant's *Daubert* challenge to Dr. Rosenzweig's general causation opinions remains pending, and Defendant has appropriately brought it to the Court's attention.

Accordingly, Defendant shall re-file its *Daubert* motion, supporting brief, and exhibits, exactly as they were filed in the MDL court prior to transfer, on or before **February 24, 2021**. Plaintiff shall then re-file its response in opposition, brief, and exhibits, exactly as they were filed in the MDL court, on or before **February 25, 2021**. Finally, Defendant shall file its reply brief, and any supporting materials, exactly as filed in the MDL court, on or before **February 26, 2021**. Although the Court is aware that the parties identified these materials in the Designation of Record, ECF No. 35, the filing process set forth in this order will ensure that the relevant materials are appropriately consolidated and presented for the Court's review.

IT IS SO ORDERED.

DATED this 19th day of February, 2021.

BY THE COURT:

/s/ Christy Criswell Wiegand  
CHRISTY CRISWELL WIEGAND  
United States District Judge

cc (via ECF email notification):

All Counsel of Record